

Item No. \_\_\_\_\_

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Approved by: Christy L. Kinard  
Assistant County Attorney

**RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, ENDORSING CONVERSION TO OPTISCAN VOTING TECHNOLOGY; REQUESTING THE TENNESSEE GENERAL ASSEMBLY SUPPORT LEGISLATION AMENDING THE TENNESSEE VOTER CONFIDENCE ACT OF 2007 RELATIVE TO ELECTION PROCEDURES AND EQUIPMENT OR, IN THE ALTERNATIVE, THAT THE STATE DIVISION OF ELECTIONS PROMULGATE APPROPRIATE REGULATIONS OR SHOW PROPER FLEXIBILITY IN ITS ENFORCEMENT OF STATE REQUIREMENTS. SPONSORED BY COMMISSIONER STEVE MULROY.**

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**WHEREAS**, the Tennessee Voter Confidence Act of 2007 (hereafter referred to as “the Act”) requires that each county in Tennessee use a precinct-based optical scanner voting system on or before the November 2010 general election; and

**WHEREAS**, numerous independent studies, including that relied upon by the Legislature from the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) have shown that electronic voting machines are subject to both data error and manipulation which may not show up during a purely electronic audit, such that the only way to be confident of election integrity is to have some sort of voter verified paper audit record; and

**WHEREAS**, studies, including the TACIR Report, suggest that optical scan voting machines are a better form of verifiable paper audit record than touch-screen machines with attached Voter-Verified Paper Audit Trail printers (“VVPAT”), because the former do not have problems with printer jams, are more amenable to hand recounts, are less likely to have long lines at voting locations, are more commonly used around the country, have a proven track record of success in Tennessee, and are more consistent with expected federal guidelines, among other reasons; and

**WHEREAS**, the Act’s optical scan approach is consistent with the national trend in this area, which is a move away from touch-screen machines and towards optical scan machines, with at least 36 States using optiscan in all of its counties, 27 of which requiring same by state law;

**WHEREAS**, the Shelby County Board of Commissioners, at the recommendation of the Ad Hoc Committee on Election Issues and the Legislative Affairs Committee, endorses the concept of precinct-based optical scan voting and desires to comply with the law subject to the availability of Federal funds through the Help America Vote Act (hereafter referred to as “HAVA”); and

**WHEREAS**, the transition to precinct-based optical scan voting presents specific challenges to Shelby County with regard to its use during early voting, the availability of a sufficient number of scanning machines, as well as the accommodation of disabled voters; and

**WHEREAS**, these special challenges can largely be resolved by using “ballot on demand” technology during early voting, having a sufficient number of spare optiscan readers, having discretion in the manner and number of paper ballots to be printed, and generally enjoying reasonable flexibility in the implementation of the conversion to an optical scan system; and

**WHEREAS**, the Board of County Commissioners of Shelby County, TN believes that it is appropriate that a resolution be passed requesting the Tennessee General Assembly

make certain amendments to the Act so as to allow Shelby County a smooth transition to precinct-based optical scan voting or, in the alternative, that the State Division of Elections promulgate appropriate regulations or show proper flexibility in its enforcement of state requirements.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE,** that the Commission hereby endorses the goals of the Act as it relates to transitioning all counties to precinct-based optical scan voting on or before the November 2010 general election.

**BE IT FURTHER RESOLVED,** that the Commission hereby requests the Tennessee General Assembly enact legislation that amends the Act or, in the alternative, that the State Division of Elections promulgate appropriate regulations or show proper flexibility in its enforcement of state requirements, as appropriate, in the following areas:

1. Distribute HAVA fund based on the number of voting locations rather than the number of precincts;
2. Maintain the level of HAVA funding for Shelby County as contemplated at the time of the passage of the Act—i.e., enough to purchase at least one optiscan reader and one disabled-access optiscan machine per voting location;
3. Allow for the use of Shelby County’s existing direct recording electronic (DRE) voting machines for disabled voters, and allow leftover HAVA funds to be used for additional optical scan machines and “ballot on demand” technology;
4. Allow for the use of ballot on demand technology during early voting; and
5. Allow the number of printed paper ballots to be based upon the County Election Commission’s estimate of likely voter turnout rather than one hundred four percent (104%) of registered voters.

**BE IT FURTHER RESOLVED,** that the Shelby County Legislative Delegation, members of the Tennessee General Assembly, and the State Division of Elections be made aware of this request by copy of this resolution.

**BE IT FURTHER RESOLVED,** that this resolution shall take effect immediately, the public welfare requiring the same.

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A C Wharton, Jr., County Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## SUMMARY SHEET

### **I. Description of Item**

Last year, the State Legislature required counties statewide to switch to optical scan voting machines with paper ballots, paid for with federal funds disbursed through Nashville. This resolution would endorse that concept generally, but ask that, in view of Shelby County's size, Nashville give us certain flexibility in transition to make a smooth transition. Primarily, it asks for permission to use "ballot on demand" technology during early voting, and for enough federal funds to pay for "ballot on demand" machines and spare optical scan readers. The resolution came recommended unanimously from the Ad Hoc Committee on Elections, but incorporates some minor changes to that original recommendation based on consultations with the Election Commission. Background, and fuller detail, follows.

In 2005, this body and the County Election Commission endorsed the use of purchasing voter-verified paper audit trail printers (VVPAT) for the county's new touch-screen voting machines, and funds were appropriated to purchase appropriate machines. In 2007, this body adopted a resolution calling upon the State of Tennessee to require some form of verifiable paper audit record, either VVPAT or optical scan, in Tennessee counties. However, the Election Commission was unable to actually purchase and implement the VVPAT technology because of the failure of the State Coordinator of Elections to certify such machines for use in Tennessee.

In 2008, the Legislature in Nashville passed the Voter Confidence Act (Act), which requires all Tennessee counties to use optical scan machines with paper ballots by 2010. The law provides that federal Help America Vote Act (HAVA) held by Tennessee would be used to pay the up-front costs borne by counties for buying the technology. The law was supported by TACIR studies showing (1) that some type of paper record was necessary to ensure election integrity, and (2) that optical scan machines were better than VVPAT printers for this purpose, for a number of reasons: optiscan does not have printer jam problems, is easier to use with hand recounts, better deals with long lines, is more widely used in the U.S., is consistent with the national reform trend (optiscan is now used statewide in 36 states), has a proven track record in Tennessee, and is more consistent with expected federal requirements.

Since that time, concerns have been raised in Shelby County regarding the difficulty of complying with the Act's mandate. The concerns stem from the large number of voters in Shelby County, especially during early voting. They focus primarily on the difficulty of having multiple hard copies of 100 different ballot "faces" ready for use at satellite early voting locations during early voting. This concern can be addressed by using "ballot on demand" printers during early voters. Under "ballot on demand," a voter would enter an early voting location, specify his or her precinct, and a computer would then generate an appropriate paper ballot.

Further, election officials have raised the concern that we have a sufficient number of spare optical scan readers on hand on election day. Although the legislative history of the Act indicates that the Legislature contemplated giving each county enough HAVA funds to buy one optical scan reader and one disability-access optiscan machine per precinct, Shelby County could save money if it were allowed to use its existing touch-screen machines for disability-access use. The freed-up funds could then be used to buy "ballot on demand" technology and extra optiscan readers.

Although one approach would be to ask the Legislature to exempt Shelby County from compliance with the Act entirely, or to amend the Act to allow Shelby to use VVPAT printers rather than optiscan technology, county lobbyists have indicated that the Legislature is unlikely to provide such relief, or to so substantially change a law passed just last year by overwhelming margins in both the House and Senate. Additionally, for the reasons explained above, converting to optiscan technology would arguably better and more practically protect election integrity, without undue cost to Shelby County.

This resolution would endorse the conversion to optiscan technology required by the Legislature, but ask Nashville to provide flexibility and assistance to make our conversion to optiscan less difficult. It would call upon legislators and regulators in Nashville to allow Shelby County to use "ballot on demand," and to pay for it by letting Shelby keep HAVA funds saved by using existing touch-screen machines for disability-access purposes. These saved HAVA funds could also be used to pay for "extra" optiscan readers. The resolution would also ask Nashville to give Shelby County flexibility in the number of ballots it needs to have on hand in advance of an election.

The Ad Hoc Committee on Elections unanimously endorsed a resolution almost identical to this one, with the addition that it asked that Nashville consider extending the 2010 compliance deadline. During consultation with the Election Commission at a subsequent meeting of the Ad Hoc Committee, some Election Commissioners stated opposition to extension of the 2010 deadline. Other Election

Commissioners expressed concern that state law would require us to print too many extra paper ballots. The current resolution has been changed to take out any request for an extension past 2010, and to add a request for flexibility regarding the requirement of printing paper ballots based on 104% of total voter registration.

**II. Source and Amount of Funding**

Not applicable

**III. Contract Items**

Not applicable.

**IV. Additional Information Relevant to Approval of this Item**

Not applicable.